

DEBT AND DEBT COLLECTORS

If you use credit cards, owe money on a personal loan, or are paying on a home mortgage, you are a "debtor." As a debtor you are expected to meet the terms of your contract and make your payments on time. If you fall behind in repaying your creditors, or an error is made on your account, your creditor may turn your account over to a "debt collector."

FALLACIES

Fallacies regarding debts and debt collectors or collection agencies are:

- ◆ That creditors are unable to or are forbidden by law from turning accounts over to a collection agency. This is simply not true. Debts arising out of virtually all transactions can and could be turned over to collection agencies for collection efforts.
- ◆ That if a person is making any effort at paying a debt, it cannot be turned over to a collection agency nor can a lawsuit be filed. Again, this is not true. A creditor is entitled to be paid according to the terms of the contract and has every right to resort to collection agencies or lawsuits in order to collect, if necessary.
- ◆ That the creditor must comply with the Federal Fair Debt Collection Practices Act in collecting their accounts. The Act does not apply to the creditor or employees of creditors in collecting their own debts in their own names; the act only applies to third party collectors such as collection agencies and attorneys who collect debts on a regular basis.

FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

If your delinquent account has been turned over to a third party collector, the Federal Fair Debt Collection Practices Act requires that debt collectors treat you fairly by prohibiting certain methods of debt collection. The act is designed to curtail unfair, abusive, or outrageous practices and tactics by third party collectors. It does not forbid collection contacts or collection efforts nor curtail legitimate activities.

HOW MAY A DEBT COLLECTOR CONTACT YOU?

A collector may contact you in person, by mail, telephone, telegram, or FAX. However, a debt collector may not contact you at unreasonable times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer disapproves.

CAN YOU STOP A DEBT COLLECTOR FROM CONTACTING YOU?

You may stop a collector from contacting you by writing a letter to the collection agency telling them to stop. Once the agency receives your letter, they may not contact you again except to say there will be no

further contact or to indicate that a certain specific action is about to take place.

MAY A DEBT COLLECTOR CONTACT ANYONE OTHER THAN YOU CONCERNING YOUR DEBT?

If you have an attorney, the debt collector may not contact any person other than your attorney unless there is no response from the attorney within a reasonable time. If you do not have an attorney, a collector may contact other people, but only to find out where you live and work. Collectors usually are prohibited from contacting such permissible third parties more than once. In most cases, the collector is not permitted to tell anyone other than you and your attorney that you owe money.

WHAT INFORMATION IS THE DEBT COLLECTOR REQUIRED TO TELL YOU ABOUT THE DEBT?

Within five days after you are first contacted, the collector must send you a written notice telling you the amount of money you owe; the name of the creditor to whom you owe the money; and what action to take if you believe you do not owe the money.

WHAT IF I DON'T OWE THE DEBT?

If you dispute the debt in writing within thirty days of the initial contact, collection activities must cease until the debt is verified.

WHAT TYPE OF DEBT COLLECTION PRACTICES ARE PROHIBITED?

Harassment

Debt collectors may not harass, oppress, or abuse any person. **They may not:**

- ◆ use threats of violence or harm to the person, his/her property, or reputation;
- ◆ publish a list of consumers who refuse to pay their debts (except to a credit bureau);
- ◆ use obscene or profane language;
- ◆ repeatedly use the telephone to annoy someone;
- ◆ telephone people without identifying themselves;
- ◆ make anonymous phone calls or charge the debtor for collect calls or telegram fees;
- ◆ advertise your debt.

False statements

Debt collectors may not use any false statements when collecting a debt. **They may not:**

- ◆ falsely imply that you have committed a crime;
- ◆ falsely imply that they are attorneys or government representatives;
- ◆ misrepresent the amount of your debt;
- ◆ indicate that papers being sent to you are legal forms when they're not or indicating papers are not legal forms when they are;
- ◆ state you will be arrested if you do not pay your debt;
- ◆ state they will seize, garnish, attach, or sell your property or wages or that actions such as a law suit will be taken against you, unless the collection agency or creditor intends to do so, and it is legal to do so;
- ◆ give false credit information about you to anyone;
- ◆ send you anything that looks like an official document from a court or government agency when it is not;
- ◆ use a false name.

Unfair practices

Debt collectors may not engage in unfair practices in attempting to collect a debt. For example, **collectors may not:**

- ◆ collect any amount greater than your debt, unless allowed by law;
- ◆ deposit a post-dated check prematurely;
- ◆ take or threaten to take your property unless this can be done legally;
- ◆ contact you by postcard;
- ◆ apply a payment to any debt you believe you do not owe.

The Fair Debt Collection Practices Act is "selfenforcing," meaning there is no agency to enforce the Act.

You can sue a collector in a state or federal court within one year from the date you believe the law was violated. The Act provides for recovery of attorneys fees plus actual and punitive damages and court costs in the event that the consumer prevails up to \$1,000. Class actions are also possible under the Act with damages of the lesser of \$500,000 or 1 percent of net worth.



The Indiana Department of Financial Institutions, Division of Consumer Credit has many other credit related brochures available, such as:

Answers to Credit Problems
Applying for Credit
At Home Shopping Rights
Bankruptcy Facts
Buried in Debt
Car Financing Scams
Charge Card Fraud
Choosing A Credit Card
Co-Signing
Credit and Divorce
Credit and Older Consumers
Deep in Debt?
Equal Credit Opportunity
Fair Credit Reporting
Fair Debt Collection
Gold Cards
Hang up on Fraud
High Rate Mortgages
Home Equity Credit Lines
How to Avoid Bankruptcy
Indiana Uniform Consumer Credit Code
Look Before you Lease
Mortgage Loans
Repossession
Reverse Mortgage Loans
Rule of 78s – What is it?
Scoring for Credit
Shopping for Credit
Using Credit Cards
Variable Rate Credit
What is a Budget?
What is the DFI?

Call our toll-free number or write to the address on the cover for a copy of any of the brochures listed or for further consumer credit information.



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Debt Collection Problems?



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